



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 17, 2014

Ms. Linda Pemberton  
Paralegal  
Office of the City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540-1329

OR2014-10384

Dear Ms. Pemberton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 526091 (Killeen PD No. W013057).

The Killeen Police Department (the "department") received a request for the requestor's personnel file, including a copy of the requestor's most recent firearms proficiency certification and psychiatric evaluation. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes such as section 143.089 of the Local Government Code. You state the City of Killeen is a civil service city under chapter 143 of the Local Government Code. Section 143.089 requires a civil service city to maintain two different types of personnel files relating to a police officer: a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). Information that reasonably relates to an officer's employment relationship with the police department is maintained in a police department's internal file pursuant to section 143.089(g). This file is confidential and must not be released. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San

Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied). You state the submitted information is maintained in the department's internal file pursuant to section 143.089(g) of the Local Government Code.<sup>1</sup> Upon review, we agree the submitted information is generally confidential pursuant to section 143.089(g) of the Local Government Code.<sup>2</sup>

We note, however, the requestor is the officer to whom the submitted information pertains and the information includes the requestor's fingerprints. The public availability of the requestor's fingerprints is governed by chapter 560 of the Government Code. Section 560.003 states "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, the requestor has a right of access to his fingerprints pursuant to section 560.002. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

In this instance, the department seeks to withhold the requestor's fingerprints on the basis of section 143.089(g) of the Local Government Code. Thus, we must address the conflict between the requestor's right of access under section 560.002 of the Government Code and the confidentiality provided by section 143.089(g) of the Local Government Code. When information falls within both a general and a specific statutory provision, the specific provision prevails over the general provision, unless the general provision was enacted later and there is clear evidence the legislature intended for the general provision to prevail. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Section 560.002 of the Government Code is a more specific statute than section 143.089(g) because section 560.002 applies specifically to fingerprints and section 143.089(g) of the Local Government Code is generally applicable to records in a personnel file. Therefore, the requestor's fingerprints,

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<sup>1</sup>We note that although section 143.089(e) provides police officers a right of access to their own civil service file maintained under section 143.089(a), this office has determined that police officers do not have a right to their own internal files maintained by a police department pursuant to section 143.089(g). *See* Open Records Decision No. 650 at 3 (1996) (confidentiality provision of section 143.089(g) contains no exceptions).

<sup>2</sup>We note section 143.089(g) requires the department to "refer to the [civil service] director or the director's designee a person or agency that requests information that is maintained in [a] police officer's personnel file." Local Gov't Code § 143.089(g). You state the director of civil service for the city is also the director of human resources. You explain that "because all records are in the possession of the city and the city attorney's office would ultimately have to assist the civil service director in responding, the requestor has not been referred to the director of civil service so as to minimize delay." Thus, we understand you are responding to the present request for information on behalf of both the department and the civil service director.

which we have marked for release, are governed by section 560.002 of the Government Code and must be released to him on this basis. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

In summary, the requestor's fingerprints, which we have marked for release, must be released to him pursuant to section 560.002 of the Government Code.<sup>3</sup> The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 526091

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>Because the information being released in this instance is confidential with respect to the general public, the department must again seek a ruling from this office if it receives another request for this information from a different individual. See Gov't Code § 560.002(1)(A).